

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1333 of 1986

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed : YES  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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VISNAGAR SWAMINARAYAN TEMPLE THROUGH IS TRUSTEES

Versus

SONI MAGNUBHAI HARGOVANDAS DECD. THRO HEIR & L.R.

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Appearance:

MR MC SHAH for Petitioners

MR JR NANAVATI for Respondent

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CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 16/06/2000

ORAL JUDGEMENT

1. This is a revision application under section 29(2) of the Bombay Rent Act at the instance of the original plaintiff-landlord.

2. The plaintiff-landlord had sued the respondent-tenant for a decree of eviction under the provisions of section 13(1)(b) of the Bombay Rent Act on

the ground that the tenant had "without the landlord's consent given in writing, erected on the premises a permanent structure".

3. The trial court, after appreciating the evidence on record, had passed a decree for eviction, which in the appeal filed by the tenant, was reversed by allowing the appeal. Hence the present revision.

4. There is no serious controversy before me (as in the case before the lower appellate court) as to the construction put up by the tenant.

5. The facts established on the record of the case are to the effect that the leased premises consist of two municipal census nos.504/47 and 504/47/1. These are two premises let out as shops, being adjacent to each other. The record also indicates that the house in question was about 200 years old and that the defendant has been a tenant in respect of these two premises since the year 1933.

6. Ignoring the minor details, there appears to be substantive agreement between the learned counsel on the facts established on record as regards the alleged changes made by the tenant in the premises. The plaintiff's case was that two shops were let out as per the rent note Exh.39. The western wall of the relevant shop is on a side road and the front portion of the western wall is the southern wall of the shop.

7. The evidence on record establishes that the defendant-tenant issued a notice Exh.44 to the landlord in April 1974, wherein the tenant contended that the premises are in dilapidated condition to the extent that it is dangerous to human life and that therefore the landlord should get it repaired. The reply of the landlord at Exh.45 dated 16th April 1974 denies all the contentions of the tenant, and further informed the tenant that in case the tenant spent any amount in repairs, the tenant would not be reimbursed in any manner whatsoever.

8. On 13th May 1974, the Visnagar Nagarpalika served the tenant with a notice at Exh.50 which is a statutory notice calling upon the defendant to repair the premises, failing which the same would be pulled down since it was dangerous to human life. The tenant, therefore, once again addressed another notice Exh.46 on 21st August 1974 to the landlord wherein he urged the landlord to repair the shop failing which the tenant would undertake the

necessary repairs at the cost of the landlord. In the meanwhile the tenant had applied to the Municipality for permission to repair the shop, which permission was granted (Exh.49).

9. The tenant thereafter sought permission of the landlord to carry out the repairs at his own costs and for this purpose executed a writing at Exh.53. No doubt, the tenant has in this writing stated that the western wall of the shop is in a dilapidated condition and requires to be pulled down and reconstructed and that the defendant shall do so at his own costs. It is under these circumstances that the defendant proceeded to carry out the necessary repairs/renovations to the property in question.

10. From the evidence on record it is clear that the western wall has been reconstructed. The southern wall (forming the front part of the shop) which is at right-angles to the western wall, is also reconstructed. The lower appellate court has observed that "if there was any partition between the shops it is removed and the shops are converted into a single unit". At this stage it must be noted that the removal of the common wall between the two shops let out so as to convert them into a single unit is not a finding of fact recorded by the lower appellate court, inasmuch as the evidence on record indicates that as early as the year 1957, the tenant had with the permission of the landlord removed the partition wall and had converted the two adjoining shops into one unit. This, however, is a disputed question of fact on which the lower appellate court has not recorded any finding (since the same is not crucial to the matter). The ceiling of the ground floor premises which was formerly of wooden beams has been removed and replaced by cement concrete slab. Two old doors are replaced by new doors. The roof has been raised from the centre by about a foot or so, while the terminals of this slope are left in the same place. The result is that the roof now has a slightly greater slope than it had previously.

11. From the very nature of the evidence and looking to the nature of the controversy, it appears to me that there is no substantial dispute as to the evidence, at least pertaining to the changes made by the tenant, or any dispute as to the interpretation of the evidence. The only dispute appears to be as to the legal interpretation flowing from this evidence. By now it is well settled law which I need not discuss in detail that, in the interpretation of section 13(1)(b) of the said Act, and particularly in the context of the phrase "any

permanent structure", it is not possible nor desirable to take a hypertechnical or pedantic view of the matter. In the case of restorations and/or renovations carried out on properties, if the restoration/renovation differs from the original by a few inches either way, the same would not make any difference. Similarly, a restoration/renovation which is not precisely identical to the original structure, or is not erected by using precisely the original structural materials, is again not the crux of the matter. The essence of this provision has been interpreted to mean that the alteration/restoration must be carried out in a manner which does not change the fundamental characteristics of the property in any way. On the facts and circumstances of the case I am satisfied that the lower appellate court was justified in concluding that the tenant carried out the restoration/renovation under statutory compulsion on account of statutory notice issued by the Municipality, and on the factual aspect, the changes by way of renovation and restoration effected by the tenant do not change the fundamental characteristics of the property in any way.

12. The lower appellate court has referred to a decision of this court in the case of Jaikisondas Vs. Abdul Rehman, reported in AIR 1975 Gujarat 205. To my mind this decision is not of much importance in its application to the facts and circumstances of the case, inasmuch as it lays emphasis on the manner in which the structure is erected, the purpose for erecting the structure and the intention of the party who puts up the structure. On the facts of this case it is found that the tenant was under a statutory compulsion to carry out the renovation, and the manner in which the restoration has been carried out is not such which would in any manner change the fundamental characteristics of the property in any way.

13. No doubt, the ceiling of the rented premises, which was formerly supported on wooden beams, has been replaced by an RCC slab. This is a change in the nature of the structure, but is not in any manner detrimental to either the property or to the interest of the landlord so as to give any legitimate cause of action for eviction.

14. It was sought to be urged before the lower appellate court that the tenant was required only to replace the western wall instead of which the southern wall has also been replaced. In this context the lower appellate court has appreciated the evidence on record and concluded (and according to me rightly so) that the

western wall was already partly in a state of collapse, which was the basis of the notice issued by the municipality, and that during the course of renovation, when this wall was removed, the wall at right angles thereto viz. the southern wall also collapsed. It goes without saying, and is a matter of common sense, that when two walls at right angles to each other collapse, the ceiling which is supported by these two walls would not continue to support itself or remain as it was. It would also collapse or seriously bend or fracture. It was therefore but natural that once both these two walls viz. the western wall and southern wall had been reconstructed, the ceiling and the roof above had also to be replaced. It is pertinent to note that although the ceiling has been replaced by an RCC slab, the restoration of the roof has been made by using the very same materials from which the original roof was constructed.

16. The lower appellate court has quoted with approval the observations of the Bombay High Court in the case of Gopaldas Vs. Vijaysingh, reported in AIR 1982 Bombay 305. This was also a case where the Municipality served a notice upon the tenant requiring the restoration/renovation of a dilapidated structure, which was complied with by the tenant. In the suit filed by the landlord on account of this restoration, Their Lordships of the Bombay High Court came to the conclusion that mere restoration of the premises would not amount to putting up a new construction.

"What section 13(1)(b) lays down is that the structure which is erected by the tenant must not be different from the demised premises and must not change the character or situation and the nature of the premises demised. Apart from the character of that work being of a permanent nature or enduring and lasting nature, there must be some addition to the premises. Mere re-erection or re-construction of premises which had either fallen down or which were required to be pulled down, cannot be termed as such construction."

16.1 Their Lordships of the Bombay High Court further held as under:

"Merely because cement was used, it could not be held that the construction was not a restoration of the former structure made of old bricks and lime mortar but an entirely and wholly new

construction of a permanent nature. What the tenant had done amounted to restoration and reconstruction of the premises which were required to be pulled down in obedience of the orders of the Municipal Corporation. The petitioner would have been visited with a prosecution and fine if he had failed to comply with the provisions of Section 195 of the Maharashtra Municipalities Act, 1965. Therefore, the tenant had acted not voluntarily but in obedience of the process of law, and may be under a compulsion. Under the circumstances it could not be held that in the present case he had attracted the penalty of eviction under the provisions of section 13(1)(b), and the structure erected was of a permanent nature."

It is for this reason that I am of the opinion that merely because the tenant had renovated or carried out restoration in the property, even if such renovation or restoration is partly of a permanent nature, and even if this is done without the written consent of the landlord (since it is done under a statutory compulsion), this does not constitute a ground for eviction under section 13(1)(b), so long as the restoration/renovation does not change the fundamental characteristics of the property in any way.

17. In the premises aforesaid, even on a re-appraisal of the evidence on record, I am satisfied that the findings of fact recorded by the lower appellate court and the conclusions drawn therefrom are justified and require to be sustained. I, therefore, do not see any cause for interference by way of the present revision, which requires to be dismissed. Accordingly this revision is dismissed. Rule is discharged with no order as to costs.

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